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In the Supreme Court of the United States

OCTOBER TERM, 1933

NO. ——

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE, Petitioner

v.

OTTO H. FALK ET AL., EXECUTORS OF THE ESTATE of Charles F. Pfister, Deceased

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

PETITION

The Solicitor General, on behalf of the Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Seventh Circuit entered in the above-entitled cause on March 6, 1933, reversing the decisions of the Board of Tax Appeals.[1]

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[1] Seven petitions to review determinations of the Commissioner of Internal Revenue were consolidated for hearing before the Board of Tax Appeals. A separate order was

QUESTION PRESENTED

Whether beneficiaries of a trust who have no interest in the trust corpus are entitled to a deduction for depletion of a mineral property constituting the corpus of the trust.

STATUTES INVOLVED

The statutes involved will be found in the Appendix (*infra*, pp. 17–24).

STATEMENT

The judgment below reversed the orders of the Board of Tax Appeals in seven cases which were consolidated for hearing. The facts are the same in all of the cases. They were stipulated (R. 79–97) and found by the Board (R. 98–101). They may be summarized as follows:

On November 29, 1916, the Pfister Land Company conveyed certain real property to Charles F. Pfister, Jessie Hoyt Smith, and John W. Mariner, as trustees, to hold the property in trust during the lives of Smith and Mariner and for 21 years thereafter (R. 82–96, 98). The trustees were given full power to sell, lease, mortgage, or otherwise dis-

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entered by the Board in each case (R. 102–104). One petition for review was filed in the Circuit Court of Appeals including all of the cases (R. 104–107), and a single judgment was entered reversing each of the decisions of the Board of Tax Appeals. Since the cases were all heard on the same record in the Circuit Court of Appeals, and a single judgment was entered by that court, a single petition is filed here under the same title by which the case was designated in the court below.

pose of the trust property and to exercise full powers of management and control. The trust deed provided that after payment of the expenses of administration, "all proceeds" should be distributed to the beneficiaries in accordance with their respective interests.

Upon the expiration of the trust by lapse of time or upon the happening of certain contingencies (none of which occurred before or during the taxable years here involved) the trustees were directed to convey the property remaining in the trust back to the grantor, the Pfister Land Company (R. 92, 99).

Part of the property conveyed to the trustees was known as the "Bristol Mine," and was subject to a mining lease for a term of more than fourteen years. The royalty rate reserved in this lease was nineteen cents per ton (R. 80, 99). The trustees distributed the entire amount of royalties received by them under this lease among the beneficiaries of the trust in accordance with their respective interests, without reserving from this distribution any sum as a depletion reserve (R. 80, 100).

For the calendar years 1922 to 1926, inclusive, the fiduciary returns made by the trustees showed depletion deductions based upon a depletion rate of 13.255 cents per ton.[2] The Commissioner dis-

[2] The amount of depletion to which the respondents are entitled, if such a deduction is allowable, has been stipulated and is not in dispute (R. 80, 99–100).

allowed this deduction and increased the distributive share of each beneficiary by a proportionate amount of the depletion deduction. Pursuant to this determination, he determined deficiencies against Charles F. Pfister for the years 1922 and 1923; against Ida Lane Smith for the years 1923, 1924, 1925, and 1926; against J. W. Mariner for the year 1923; and against the Elmwood Company of Delaware for 1923 and 1926 (R. 5, 16, 29, 41, 53, 64, 76, 101).

The Board of Tax Appeals sustained the deficiencies determined by the Commissioner (R. 102–104). The Circuit Court of Appeals held that the beneficiaries were entitled to a deduction for depletion and reversed the decision of the Board (R. 117–119).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the respondents were entitled to a deduction for depletion of the corpus of the trust from which they received distributions of income.

2. In failing to hold that there is no statutory authority in the Revenue Acts of 1921, 1924, and 1926 for the allowance of a deduction for depletion to beneficiaries of a trust who receive distributions of trust income but have no remainder interest in the corpus of the trust.

REASONS FOR GRANTING THE WRIT

1. In the case of *Anderson* v. *Wilson,* 289 U.S. 20, which arose under the Revenue Act of 1921, this Court held that a beneficiary of a trust should not be allowed a deduction for a loss suffered by the trust on the sale of trust property, notwithstanding the fact that the beneficiary might (in the discretion of the trustee) receive distributions of the proceeds of the sale of property belonging to the trust. Similarly, in *Abell* v. *Tait,* 30 F. (2d) 54 (C.C.A. 4th), certiorari denied, 279 U.S. 849, and *Baltzell* v. *Mitchell,* 3 F. (2d) 428 (C.C.A. 1st), certiorari denied, 268 U.S. 690, it was held under the Revenue Act of 1918 that there was no statutory authority for the allowance to beneficiaries of trusts of losses sustained on the sale of capital assets of the trust. It has likewise been held under these and later statutes that the beneficiary of a trust may not take a deduction on account of depreciation of trust assets. *Roxburghe* v. *United States,* 64 C.Cls. 223, certiorari denied, 278 U.S. 598; *Whitcomb* v. *Blair,* 25 F. (2d) 528 (App.D.C.); *Codman* v. *Miles,* 28 F. (2d) 823 (C.C.A. 4th), certiorari denied, 278 U.S. 654; *Hubbell* v. *Burnet,* 46 F. (2d) 446 (C.C.A. 8th), certiorari denied, 283 U.S. 840; *Codman* v. *Commissioner,* 50 F. (2d) 763 (C.C.A. 1st); *Roxburghe* v. *Burnet,* 58 F. (2d) 693 (App.D.C.), certiorari denied, 286 U.S. 567.

It is clear that Sections 214 and 219 of the Revenue Acts of 1921, 1924, and 1926 (*infra,* pp. 17–24),

involved in the cases at bar, are as lacking in any specific provision for the allowance of deductions for depletion to beneficiaries of trusts as they are in provisions for the allowance of deductions for depreciation and capital losses to beneficiaries. Hence, we believe that the case at bar is in conflict with the cases just cited.

2. The court below in deciding that respondents were entitled to depletion deductions relied upon *Merle-Smith* v. *Commissioner,* 42 F. (2d) 837 (C.C.A. 2d), certiorari denied, 282 U.S. 897. It is true that the beneficiaries in that case were allowed a deduction for depletion, but the decision was based in part on the fact that the principal beneficiary would soon receive part of the corpus with power to dispose thereof by will at any time before. Nor do we construe general statements in *Palmer* v. *Bender,* 287 U.S. 551, to the effect that depletion should be allowed in every case in which the taxpayer has acquired, by investment, an interest in the mineral in place as authority for the allowance of depletion to everyone deriving income from mineral property and therefore to the beneficiary of a trust. Hence, the question in this case does not seem to us to have been decided by these cases.

3. The question is one of general importance which arises under all of the Revenue Acts before

the Revenue Act of 1928.[3] A decision is required for the assistance of the Treasury Department in its administration of the law.

Wherefore, it is respectfully submitted that this petition should be granted.

J. CRAWFORD BIGGS,
Solicitor General.

JULY 1933.

[3] Section 23 (1) of the Revenue Act of 1928 provides for the apportionment of depletion between the beneficiaries and the trustee.

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BRIEF IN SUPPORT OF PETITION

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 97–102) is reported in 24 B.T.A. 299. The opinion of the Circuit Court of Appeals (R. 117–119) is reported in 64 F. (2d) 171.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 6, 1933. A petition for a rehearing was denied May 1, 1933 (R. 121). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED, STATUTES INVOLVED, ETC.

A statement of the question presented, statutes involved, specification of errors to be urged, and a statement of the case will be found in the foregoing petition.

ARGUMENT

In *Anderson* v. *Wilson*, 289 U.S. 20, this Court recognized that a trust estate was made a separate taxable entity under Section 219 of the Revenue Act of 1921 and that there was no provision in Section 214 or 219 of that Act under which a beneficiary of a trust might claim a deduction for a loss

on the sale of capital assets by the trustee. In that case the beneficiary actually received distributions of the proceeds of the sale of real property constituting a part of the corpus of the trust, but the Court nevertheless disallowed the claimed deduction. In so holding, the Court said (p. 26):

> We hold that the trust, and not the taxpayer, has suffered the loss resulting from the sale of the Commercial Building, and it follows that where loss has not been suffered, there is none to be allowed. Whether the result would be the same if the beneficiaries had been the owner of future estates in remainder, we are not required to determine. Cf. *Francis* v. *Commissioner*, 15 B.T.A. 1332, 1340. Our ruling will be kept within the limits of the case before us. In so ruling we do not forget that the trust is an abstraction, and that the economic pinch is felt by men of flesh and blood. Even so, the law has seen fit to deal with this abstraction for income-tax purposes as a separate existence, making its own return under the hand of the fiduciary and claiming and receiving its own appropriate deductions. The Revenue Act of 1921 under which the tax in question was imposed defines the word "taxpayer" as including a trust or an estate. Revenue Act of 1921, c. 136; 42 Stat. 227, sec. 2 (9). The definition is pursued to its logical conclusion in a long series of decisions. *Baltzell* v. *Mitchell*, 3 F. (2d) 428; *Whitcomb* v. *Blair*, 25 F. (2d) 528; *Abell* v.

> *Tait*, 30 F. (2d) 54; *Busch* v. *Commissioner*, 50 F. (2d) 800, 801; *Roxburghe* v. *Burnet*, 58 F. (2d) 693; cf. *Merchants Loan & Trust Co. v. Smietanka*, 255 U.S. 509. These and other cases bear witness to the rule that an equitable life tenant may not receive a deduction for the loss of capital assets of the trust, though the result of such a loss is a reduction of his income. The argument will not hold that what was lost to this taxpayer was not the capital of the trust, but rather his own capital, withdrawn from his possession, but held for his account by the executors as custodians or bailiffs. His capital was in the proceeds, to the extent that they were distributed, and never in the land. We do not pause to consider whether a statute differently conceived and framed would yield results more consonant with fairness and reason. We take the statute as we find it.

The Court there recognized that the allowance of a capital loss to an equitable life tenant was prohibited by the same principles that have been relied upon in disallowing depreciation of the trust assets to beneficiaries in such cases as *Whitcomb* v. *Blair*, 25 F. (2d) 528 (App.D.C.); *Roxburghe* v. *Burnet*, 58 F. (2d) 693 (App.D.C.), certiorari denied, 286 U.S. 567; *Roxburghe* v. *United States*, 64 C.Cls. 223, certiorari denied, 278 U.S. 598; *Codman* v. *Miles*, 28 F. (2d) 823 (C.C.A. 4th), certiorari denied, 278 U.S. 654; *Hubbell* v. *Burnet*, 46 F. (2d)

446 (C.C.A. 8th), certiorari denied, 283 U.S. 840; *Codman* v. *Commissioner*, 50 F. (2d) 763 (C.C.A. 1st).

It is evident that Section 219 of the various Acts here involved makes no provision for the allowance of either depreciation or depletion to beneficiaries of trusts. Under that section trusts are divided into several different classes according to the disposition to be made of the income. Where all or part of the income is retained and the fiduciary is taxed, the privilege of deducting depreciation and depletion is extended to the fiduciary under the provision that the income of the trust shall be taxed as that of an individual. But the privilege is not extended to the beneficiary where he, rather than the fiduciary, is taxed. On the contrary the beneficiary is required to report—

> that part of the income of the estate or trust for its taxable year which, pursuant to the instrument or order governing the distribution, is distributable to such beneficiary, whether distributed or not, * * *.

The respondents in this case were entitled to receive their full proportionate share of the net income of the trust. There is no provision in the trust instrument requiring the trustees to deduct any amount for depletion or other capital items before computing and paying to the beneficiaries their distributive share. Therefore, under a proper construction of the trust instruments, the trustees paid

the respondents their proportionate share of the trust income undiminished by deductions representing exhausted capital (R. 80). Irrespective of what the net income of the trust for any year might be, this distributive share[4] was the amount which Congress intended to be taxed. The beneficiary may not claim a deduction to which the fiduciary is entitled, for they are separate entities. *Anderson* v. *Wilson, supra.*

The only provision for the allowance of depletion under which deductions could be claimed in this case is Section 214 (a) (10) of the Act of 1921 (*infra,* pp. 17–18), and Section 214 (a) (9) of the Revenue Acts of 1924 and 1926 (*infra,* pp. 21, 24). None of those sections includes a provision for the allowance of depletion to equitable life tenants and the fact that in enacting Section 23 (1) of the Revenue Act of 1928, c. 852, 45 Stat. 791, 799, Congress found it desirable to include a specific provision for the allowance, indicates that it did not exist in the earlier statutes.

In *Palmer* v. *Bender,* 287 U.S. 551, this Court held that a lessee of oil wells who transfers them to

[4] The beneficiaries of this trust were entitled to receive all of the "proceeds" received by the trustees. This would include the right to the proceeds of the sale of the trust corpus, unless at the same time the holders of 51 per cent of the beneficial interest in the trust required its termination, in which event the proceeds would go to the Pfister Land Company. No point has been made of this and we consider it immaterial in view of *Anderson* v. *Wilson, supra.*

another, stipulating for a royalty or bonus from oil to be produced, thereby retains an economic interest in the oil in place which is depleted by production and which comes within the meaning and purpose of Section 214 (a) (10) of the Revenue Act of 1921, whether the conveyance be deemed by the law of the State a sublease or an assignment. In so holding the Court said (pp. 557–558):

> Similarly, the lessor's right to a depletion allowance does not depend upon his retention of ownership or any other particular form of legal interest in the mineral content of the land. It is enough if, by virtue of the leasing transaction, he has retained a right to share in the oil produced. If so he has an economic interest in the oil, in place, which is depleted by production. Thus, we have recently held that the lessor is entitled to a depletion allowance on bonus and royalties, although by the local law ownership of the minerals, in place, passed from the lessor upon the execution of the lease. See *Burnet* v. *Harmel, supra; Bankers Pocahontas Coal Co.* v. *Burnet, ante,* p. 308.

This decision, we submit, does not stand for the principle that a depletion allowance should be granted to everyone who receives income from mineral property. Moreover, if an actual investment in the property is a prerequisite to the allowance, the beneficaries in this case had none.

The court below seems to have given weight to the respondents' argument that since both the min-

ing lease and the term of the trust extended far beyond the life of the mine, there would be nothing left of the ore reserves after the termination of the trust and hence that the respondents had a property right in the oil reserves. But the evidence did not disclose that the mineral body was exhausted before the lease expired. It disclosed merely that if production had been continued at the rate of production applicable to the years here involved, the entire mineral body would have been exhausted before the lease expired (R. 81). In any event we submit that the right of the beneficiaries to the statutory allowance for depletion does not depend upon so variable a factor as the term of the particular trust; that it is incorrect to say that a beneficiary under a trust for a short term has no property right in the ore reserve but that his interest is different where the term of the trust extends beyond the life of the mine. The life of the mine depends upon the extent to which it is worked and the argument that a beneficiary's right to a depletion allowance depends upon the operating program of those who are actually working the mine seems to have little merit. The respondents' interest as beneficiaries of the trust was merely a right to receive income and would not be converted into a remainder interest even through the ceasing of income. The grantor is the remainderman.

It is our view that the fact that the beneficiaries in this case have no interest in the corpus as such

distinguishes the cases from *Merle-Smith* v. *Commissioner,* 42 F. (2d) 837 (C.C.A. 2d), certiorari denied, 282 U.S. 897, upon which the court below relied. In that case it was held that certain beneficiaries were entitled to royalties from mining property held in trust, but the principal beneficiary involved held a remainder interest in the corpus shortly to become vested and that fact was emphasized in the majority opinion,[5] though the court did consider that there was a distinction in the nature of depreciation and depletion deductions. Moreover, this distinction, which is emphasized in *Weiss* v. *Wiener,* 279 U.S. 333, and was said not to exist in *Ludey* v. *United States,* 274 U.S. 295, 303, seems insufficient to justify an allowance of depletion to beneficiaries having no interest in the corpus, where the statute does not specifically provide for the allowance to them. Depletion, like other deductions, may only be claimed to the extent that it is authorized by statute. *Burnet* v. *Thompson Oil & Gas Co.,* 283 U. S. 301.

CONCLUSION

We submit that the decision of the Circuit Court of Appeals is incorrect and is in conflict with the

[5] The Bureau and the Board have accepted that decision as authority for allowing depletion to beneficiaries of a trust who have a remainder interest in the corpus. G.C.M. 9804, X-2 Cumulative Bulletin 353; G.C.M. 10273, XI-1 Cumulative Bulletin 169; *Mary Alphin* v. *Commissioner,* 21 B.T.A. 1101; *Ida L. Kuhn* v. *Commissioner,* 24 B.T.A. 216.

decisions of this Court and other Circuit Courts of Appeals, that the question involved is one of general importance, and that the petition for certiorari should be granted.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.
SEWALL KEY,
HELEN R. CARLOSS,
Special Assistants to the Attorney General.
ERWIN N. GRISWOLD,
Attorney.

JULY 1933.

APPENDIX

Revenue Act of 1921, c. 136, 42 Stat. 227, 239, 242, 246:

SEC. 214. (a) That in computing net income there shall be allowed as deductions:

* * * * *

(10) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case, based upon cost including cost of development not otherwise deducted: *Provided,* That in the case of such properties acquired prior to March 1, 1913, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date: *Provided further,* That in the case of mines, oil and gas wells, discovered by the taxpayer, on or after March 1, 1913, and not acquired as the result of purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery, or within thirty days thereafter: *And provided further,* That such depletion allowance based on discovery value shall not exceed the net income, computed without allowance for depletion, from the property upon which the discovery is made, except where such net income so computed is less

than the depletion allowance based on cost or fair market value as of March 1, 1913; such reasonable allowance in all the above cases to be made under rules and regulations to be prescribed by the Commissioner, with the approval of the Secretary. In the case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and lessee;

* * * * *

SEC. 215. (b) Amounts paid under the laws of any State, Territory, District of Columbia, possession of the United States, or foreign country as income to the holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time, nor by any deduction allowed by this Act for the purpose of computing the net income of an estate or trust but not allowed under the laws of such State, Territory, District of Columbia, possession of the United States, or foreign country for the purpose of computing the income to which such holder is entitled.

SEC. 219. (a) That the tax imposed by sections 210 and 211 shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income received by estates of deceased persons during the period of administration or settlement of the estate;

(2) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(3) Income held for future distribution under the terms of the will or trust; and

(4) Income which is to be distributed to the beneficiaries periodically, whether or not

at regular intervals, and the income collected by a guardian of an infant to be held or distributed as the court may direct.

(b) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212, except that (in lieu of the deduction authorized by paragraph (11) of subdivision (a) of section 214) there shall also be allowed as a deduction, without limitation, any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is during the taxable year paid or permanently set aside for the purposes and in the manner specified in paragraph (11) of subdivision (a) of section 214. In cases in which there is any income of the class described in paragraph (4) of subdivision (a) of this section the fiduciary shall include in the return a statement of the income of the estate or trust which, pursuant to the instrument or order governing the distribution, is distributable to each beneficiary, whether or not distributed before the close of the taxable year for which the return is made.

(c) In cases under paragraphs (1), (2), or (3) of subdivision (a) or in any other case within subdivision (a) of this section except paragraph (4) thereof the tax shall be imposed upon the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income properly paid or credited to any legatee, heir, or other beneficiary. In such cases the

estate or trust shall, for the purpose of the normal tax, be allowed the same credits as are allowed to single persons under section 216.

(d) In cases under paragraph (4) of subdivision (a), and in the case of any income of an estate during the period of administration or settlement permitted by subdivision (c) to be deducted from the net income upon which tax is to be paid by the fiduciary, the tax shall not be paid by the fiduciary, but there shall be included in computing the net income of each beneficiary that part of the income of the estate or trust for its taxable year which, pursuant to the instrument or order governing the distribution, is distributable to such beneficiary, whether distributed or not, or, if his taxable year is different from that of the estate or trust, then there shall be included in computing his net income his distributive share of the income of the estate or trust for its taxable year ending within the taxable year of the beneficiary. In such cases the beneficiary shall, for the purpose of the normal tax, be allowed as credits, in addition to the credits allowed to him under section 216, his proportionate share of such amounts specified in subdivisions (a) and (b) of section 216 as are received by the estate or trust.

(e) In the case of an estate or trust the income of which consists both of income of the class described in paragraph (4) of subdivision (a) of this section and other income, the net income of the estate or trust shall be computed and a return thereof made by the fiduciary in accordance with subdivision (b) and the tax shall be imposed, and shall be paid by the fiduciary in accordance with subdivision (c), except that there shall be al-

lowed as an additional deduction in computing the net income of the estate or trust that part of its income of the class described in paragraph (4) of subdivision (a) which, pursuant to the instrument or order governing the distribution, is distributable during its taxable year to the beneficiaries. In cases under this subdivision there shall be included, as provided in subdivision (d) of this section, in computing the net income of each beneficiary, that part of the income of the estate or trust which, pursuant to the instrument or order governing the distribution, is distributable during the taxable year to such beneficiary.

* * * * *

Revenue Act of 1924, c. 234, 43 Stat. 253, 269, 272, 275:

SEC. 214. (a) In computing net income there shall be allowed as deductions:

* * * * *

(9) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the Commissioner, with the approval of the Secretary. In the case of leases the deduction allowed by this paragraph shall be equitably apportioned between the lessor and lessee;

(U.S.C., Title 26, Sec. 955.)

* * * * *

SEC. 215. (b) Amounts paid under the laws of any State, Territory, District of Columbia, possession of the United States, or foreign country as income to the holder of a life or terminable interest acquired by gift, be-

quest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time, nor by any deduction allowed by this Act for the purpose of computing the net income of an estate or trust but not allowed under the laws of such State, Territory, District of Columbia, possession of the United States, or foreign country for the purpose of computing the income to which such holder is entitled. (U.S.C., Title 26, Sec. 956.)

SEC. 219. (a) The tax imposed by Parts I and II of this title shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) Except as otherwise provided in subdivisions (g) and (h), the tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212, except that—

* * * * *

(2) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under paragraph (3) in the same or any succeeding taxable year;

* * * * *

(c) For the purpose of the normal tax the estate or trust shall be allowed the same credit as is allowed to a single person under subdivision (c) of section 216, and, if no part of the income of the estate or trust is included in computing the net income of any legatee, heir, or beneficiary, then in addition the same credits as are allowed by subdivisions (a) and (b) of section 216.

(d) If any part of the income of an estate or trust is included in computing the net income of any legatee, heir, or beneficiary, such legatee, heir, or beneficiary shall, for the purpose of the normal tax, be allowed as credits, in addition to the credits allowed to him under section 216, his proportionate share of such amounts specified in subdivisions (a) and (b) of section 216 as are, under this section, required to be included in computing his net income. Any remaining portion of such amounts specified in subdivisions (a) and (b) of section 216 shall, for

the purpose of the normal tax, be allowed as credits to the estate or trust.

(e) If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under paragraph (2) of subdivision (b) of this section, to include in computing his net income, shall be based upon the income of the estate or trust for its taxable year ending within his taxable year. (U.S.C., Title 26, Sec. 960.)

Revenue Act of 1926, c. 27, 44 Stat. 9, 26, 28, 32:

Sections 214 (a) (9) (U.S.C.App., Title 26, Sec. 955), 215 (b) (U.S.C.App., Title 26, Sec. 956), and 219 (U.S.C.App., Title 26, Sec. 960), are identical with those above quoted.

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